



STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

Dane County Dept. of Human Services, Petitioner

vs.

██████████ Respondent

DECISION

Case #: FOF - 175662

Pursuant to petition filed July 19, 2016, under 7 C.F.R. §273.16, to review a decision by the Dane County Dept. of Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of one year, a hearing was held on September 7, 2016, by telephone.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

Petitioner:

Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343
By: ██████████

Respondent:

██████████
██████████
██████████

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Dane County who received FS benefits in Dane County in 2014 and 2015.
2. The respondent first began to receive FS in June, 2014 for a household that included her son C.S. During the application processing she provided a copy of a family court order showing that during summer months she and C.S.'s father would share placement 50-50. During school C.S. would be with the respondent every other weekend. Based on the 50-50 placement the county agency opened FS for the respondent in June, 2014. C.S.'s father never applied for FS.

3. The respondent had an FS renewal in December, 2014. With regard to her household she answered “no” to the question of whether there had been any changes. In June, 2015 the respondent filed a six-month report, again reporting no changes to her household.
4. A county worker later discovered that C.S. went to school in Menasha and that the respondent had him only every other weekend during the school year. The county determined that the respondent was overpaid \$1,304 in FS from January 1 through August 31, 2015 because she provided incorrect household information. The respondent did not appeal the overpayment.
5. On July 25, 2016, the petitioner mailed an Administrative Disqualification Hearing Notice alleging that the respondent reported inaccurate household members in order to receive more FS than she was entitled.

DISCUSSION

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

FoodShare Wisconsin Handbook, §3.14.1; see also 7 C.F.R. §273.16(c) and Wis. Stat., §§946.92(2).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing. *FoodShare Wisconsin Handbook*, §3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. §273.16(b).

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. §273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true....

Kuehn, 11 Wis.2d at 26.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* §340 (John W. Strong gen. ed., 4th ed. 1992).

In order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

Based upon the record before me, I find that the respondent did not intentionally commit an IPV. I have no problem with the overpayment because C.S. did not reside with the respondent at least 50% of the time during the school year. However, with regard to intent, the respondent provided a copy of the custody order to the county in June, 2014. When the respondent did the renewal and six-month reports in December, 2014 and June, 2015, she honestly answered no to the question of whether there had been a change in the household. In her mind she was reporting no change to the custody order she previously filed with the county. She should have been savvier and figured out that there was a difference between summer 50-50 placement and placement during the rest of the year, and that is why she was overpaid. However, lack of savvy is not the same as finding an intent to defraud the FS program. Because the respondent did not intend to commit the violation, I will order the sanction to be reversed.

CONCLUSIONS OF LAW

The respondent did not intend to commit an IPV when she reported to the agency that her household circumstances had not changed because she previously supplied a court custody order showing the placement schedule for her son C.S.

NOW, THEREFORE, it is

ORDERED

That the petitioner’s determination of an intentional program violation is reversed, and the petition for review is hereby dismissed.

APPEAL TO COURT

You may appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 12th day of September, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

c: Capital Consortium - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
[REDACTED] - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 12, 2016.

Dane Cty. Dept. of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]